

2. County welfare funds may not legally be disbursed without an investigation and recommendation by an authorized staff worker of the county welfare department or without a grant in a definite amount made by the county board.

3. The county commissioners could not authorize the disbursement of county funds by an unauthorized person in the first instance, they cannot now ratify such a disbursement and the county is not bound by their act in so delegating the disbursement of county funds.

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July 9, 1953.

Mr. John P. Moore  
County Attorney  
Glacier County  
Cut Bank, Montana

Dear Mr. Moore:

You have asked my opinion upon the following questions:

"1. Is it legal for a board of county commissioners to designate and allow a person who is not a qualified staff worker of the county welfare department to receive applications, make investigations and disburse county general relief welfare funds?"

"2. Is it legal for the county commissioners to order payment to be made for requisition orders which were issued for county general welfare relief by a person who was not a qualified staff worker of the county welfare department?"

You have stated in your letter of request these other pertinent facts: the board of county commissioners authorized a person who was not a member of the staff of the county welfare department to disburse county general relief welfare funds; these funds were not paid by check or warrant, but only through merchandise requisitions which were presented to and honored by many merchants in the vicinity; no investigation of the cases was made by the county welfare department, and no individual grants were made to the persons found eligible; there are, at

**Opinion No. 38.**

**County Welfare Boards—County Commissioners, Powers of—General Relief Funds, Disbursement of—Public Welfare Act—County Expenditures—Ratification of Improper Expenditures.**

HELD: 1. It is not legal for county commissioners to designate and allow any person not a staff worker of the county welfare department to receive applications, make investigations and disburse county general relief funds.

the present time, many requisitions outstanding which have been honored by merchants and for which the county has not made payment.

The answer to your first question requires an examination into the provisions of the Public Welfare Act. The Public Welfare Act, Chapters 2 through 11, Title 71, R. C. M., 1947, adopted in 1937 is a comprehensive enactment covering all fields of public welfare, including the expenditure of county moneys for welfare purposes. The power of the legislature to prescribe the method by which counties will spend all funds is unquestioned. In the case of *State ex rel Wilson v. Weir*, 106 Mont. 526, 79 Pac. (2d) 305, the court held:

"The revenues of a county are not the property of the county in the sense in which the revenue of a private person or corporation is regarded. A county being a public corporation existing only for public purposes connected with the administration of a state government, its revenue is subject to the control of the legislature, and when the legislature directs the application of a revenue to a particular purpose, or its payment to any party, a duty is imposed and an obligation created on the county. So, too, where the legislature expressly designates a particular mode of raising funds for a certain purpose, all other modes are excluded."

See, also: *County of Stark v. County of Henry*, 326 Ill. 525, 158 N. E. 116, 54 A. L. R. 777; *Montgomery v. State*, 228 Ala. 296, 153 So. 394; *City of Fremont v. Dodge County*, 130 Neb. 856, 266 N. W. 771; *Newman v. Schlarb*, 184 Wash. 147, 50 Pac. (2d) 36.

The Public Welfare Act establishes the method by which county funds shall be disbursed for welfare purposes. Section 71-213, R. C. M., 1947, provides for the creation in each county of a Department of Public Welfare. In part, that section reads as follows:

"County Departments to Be Established. There shall be established in each county of the state a county department of public welfare which shall consist of a county board of public welfare and such staff person-

nel as may be necessary for the efficient performance of the public welfare of the county . . ."

Section 71-214, R. C. M., 1947, provides that the Board of County Commissioners shall be the County Welfare Board.

Section 71-217, R. C. M., 1947, lays down an exclusive method by which staff personnel of the county department are to be hired. That section provides in part as follows:

"Staff Personnel—How Selected, Paid and Controlled—Dismissal. Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause."

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Section 71-216, R. C. M., 1947, as amended by Section 4, Chapter 199, Laws of 1951, outlines the duties of the county board and provides that they must be in conformity with general rules and regulations of the state board:

"Powers and Duties of the County Board. The county board of public welfare shall be responsible for es-

establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board. The county board of public welfare shall review the determinations of eligibility and amount of payment to individuals made by the staff of the county department for conformity with the aforesaid rules and regulations. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by said board."

Section 71-219, R. C. M., 1947, as amended by Sec. 1, Chap. 98, Laws of 1951, provides that the county board must make grants according to the need of each applicant based upon investigation and recommendation of the staff worker of the county departments:

"Grants-in-aid Based on Need and After Investigation. Subject to review by the county board the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and regulations and standards of assistance prescribed by the state department. In determining the amount of grant, casual, periodic or occasional income shall not be deducted from the grant, nor shall such income render a recipient ineligible for assistance, unless such income equals or exceeds the monthly assistance grant of the recipient."

All county relief must be administered in the fashion provided by these sections, and there is no differentiation between general relief and other forms of relief. This is clearly provided by Section 71-221, R. C. M., 1947, as amended by Sec. 5, Chap. 199, Laws of 1951, which provides:

"Functions and Activities of the County Department. The county department of public welfare shall be charged with the local administration

of all forms of public assistance and welfare operations in the county except that all such local administration must conform to federal and state law and the rules and regulations as established by the state department."

More specific provisions for the administration of general relief are provided by Chapter 3 Title 71, Revised Codes of Montana, 1947. Section 71-303 provides that applicants for assistance shall be eligible to receive such assistance only after investigation by the county department.

"Eligibility for Relief—Investigation of Resources. An applicant for assistance including medical care and hospitalization shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life, and assistance shall be provided to meet a minimum subsistence compatible with decency and health."

Section 71-312, R. C. M., 1947, as amended by Sec. 12, Chap. 199, Laws of 1951, provides that the applicant for relief must make application in the manner and on the form prescribed by the state department of public welfare. Section 71-313, R. C. M., 1947, as amended by Sec. 13, Chap. 199, Laws of 1951, specifically provides that an investigation must be made by the staff worker of the county department. Section 71-314, R. C. M., 1947, as amended by Sec. 14, Chap. 199, Laws of 1951, provides that the county board must determine the amount of assistance to be granted to each applicant according to rules and regulations established by the state department.

Section 71-307, R. C. M., 1947, provides that all relief shall be in the form of warrant or check, except in certain circumstances:

"Relief by Check or Disbursing Orders. All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using

them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county . . ."

The effect of the Public Welfare Act upon the previous law was considered in the case of *State ex rel. Wilson v. Weir*, supra, where it was said:

"It is argued that, since Chapter 82 does not expressly repeal Sections 4521 et seq., Revised Codes, relating to the care of the poor, those sections are still in force and effect and place the exclusive supervision of the poor in the hands of the county commissioners. We recognize and approve of the rule that repeals by implication are not favored. However, if the last Act is in conflict with a prior law on the same subject, the last one controls and works an implied repeal, and this even though the legislature does not see fit to either expressly repeal it, or even to expressly state that the last Act repeals all Acts or parts of Acts in conflict with the latter."

As it now exists, the Public Welfare Act requires that every applicant for assistance shall make application in the form and manner provided; and that his case shall be investigated by a trained staff worker, who is selected by the county department from a list prepared by the state department; that if found eligible, the applicant must be given a grant of assistance in a definite amount fixed by the county board and paid by warrant or check unless particular circumstances exist which make it inadvisable to pay that particular applicant by check. The above quoted sections of the Public Welfare Act clearly and completely outline the exclusive method of handling county general relief funds.

Your second question deals with the problem of whether or not the county commissioners may at this time honor

the outstanding requisitions and pay for them from county funds. Since the requisitions were not properly issued, the problem is whether or not the county, or the commissioners, can ratify the actions of their agent.

The duties which the county board delegated to this agent were non-delegable duties. The discretionary duties of the board of county commissioners over the disbursement of welfare funds may not be delegated. In the case of *State ex rel. Nelson v. Timmons, et al.*, 57 Mont. 602, 189 Pac. 871, the court said:

" . . . The statute imposes upon the board, and not upon the applicant, the duty to exercise judgment as to the kind and quantity of provisions to be furnished, the price to be paid, and the apportionment of the funds among those entitled to relief; and it is elementary that under such circumstances the authority cannot be delegated. The general rule is stated in 15 *Corpus Juris*, 465, as follows: 'The right of a county board to delegate its authority depends on the nature of the duty to be performed. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated to a committee or agent.' . . ."

See, also, 20 *C. J. S.*, Counties, Section 89, page 862.

A board of county commissioners is without power to ratify an act which it could not authorize in the first instance. (See *Stowe v. Maxey*, ..... *Cal.* ..... , 258 Pac. 717; 20 *C. J. S.*, Counties, Sec. 90, p. 863; 15 *C. J.* 465.) It has long been the law in Montana that acts done by the county commissioners beyond their authority are void (See *Strange v. Esval*, 57 Mont. 301, 215 Pac. 801; *Franzke v. Fergus County*, 76 Mont. 150, 245 Pac. 962) and that the county is not bound by those acts of the board done beyond the scope of its authority. In the case of *Carbon County v. Draper*, 84 Mont. 413, 276 Pac. 667, it was said:

"Our conclusion rests on the general principle that the county is not bound by the acts of the board when outside of or beyond the scope of

its authority. Public moneys are but trust funds, and officers but trustees for their administration in the manner, and for the purposes, prescribed by statute . . . ”

It is therefore my opinion that:

1. It is not legal for county commissioners to designate and allow any person not a staff worker of the county welfare department to receive applications, make investigations and disburse county general relief funds.

2. County welfare funds may not legally be disbursed without an investigation and recommendation by an authorized staff worker of the county welfare department or without a grant in a definite amount made by the county board.

3. The county commissioners could not authorize the disbursement of county funds by an unauthorized person in the first instance, they cannot now ratify such a disbursement and the county is not bound by their act in so delegating the disbursement of county funds.